

HOUSE BILL No. 1178

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-8; IC 35-38-9.

Synopsis: Expungement. Requires a public agency that operates a public web site displaying records related to an expungement to remove or redact the records after receiving satisfactory proof that the conviction or arrest has been expunged. Provides that: (1) if a person's arrest or conviction is expunged (and not merely marked as expunged); and (2) the person is named as a party in a civil action related to the expunged arrest or conviction; the court in which the civil action was filed shall, upon request, redact the person's name contained in certain public documents relating to the civil action. Requires a court, upon motion, to seal certain records relating to an expungement if: (1) the petition for expungement was filed before July 1, 2015; and (2) the petition was granted.

Effective: July 1, 2016.

Carbaugh

January 7, 2016, read first time and referred to Committee on Courts and Criminal Code.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1178

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-14-8 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2016]:

4 **Chapter 8. Expunged Records on Publicly Maintained Web**
5 **Sites**

6 **Sec. 1. This chapter applies only to a web site that is operated or**
7 **maintained by a public agency.**

8 **Sec. 2. As used in this chapter, "public agency" has the meaning**
9 **set forth in IC 5-14-3-2.**

10 **Sec. 3. As used in this chapter, "public web site displaying**
11 **records related to an expungement" means a web site:**

12 **(1) operated or maintained by a public agency; and**

13 **(2) accessible to the general public;**

14 **that displays records related to an expungement.**

15 **Sec. 4. As used in this chapter, "records related to an**
16 **expungement" includes records of:**

17 **(1) an expunged conviction or expunged arrest;**



- (2) a civil proceeding ancillary to an expunged conviction or arrest; and
- (3) an expungement proceeding.

Sec. 5. A public agency that operates or maintains a public web site displaying records related to an expungement shall, not later than thirty (30) days after receiving:

- (1) a request to remove or redact records related to an expungement; and
- (2) satisfactory proof that the underlying conviction or arrest has been expunged;

remove or redact the records related to an expungement from the web site.

SECTION 2. IC 35-38-9-1, AS AMENDED BY P.L.142-2015, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) This section applies only to a person who has been arrested, charged with an offense, or alleged to be a delinquent child, if:

- (1) the arrest, criminal charge, or juvenile delinquency allegation:
 - (A) did not result in a conviction or juvenile adjudication; or
 - (B) resulted in a conviction or juvenile adjudication and the conviction or adjudication was vacated on appeal; and
- (2) the person is not currently participating in a pretrial diversion program.

(b) Not earlier than one (1) year after the date of arrest, criminal charge, or juvenile delinquency allegation (whichever is later), if the person was not convicted or adjudicated a delinquent child, or the date of the opinion vacating the conviction or adjudication becomes final (unless the prosecuting attorney agrees in writing to an earlier time), the person may petition the court for expungement of the records related to the arrest, criminal charge, or juvenile delinquency allegation.

(c) A petition for expungement of records must be verified and filed in a circuit or superior court in the county where the criminal charges or juvenile delinquency allegation was filed, or if no criminal charges or juvenile delinquency allegation was filed, in the county where the arrest occurred. The petition must set forth:

- (1) the date of the arrest, criminal charges, or juvenile delinquency allegation, and conviction (if applicable);
- (2) the county in which the arrest occurred, the county in which the information or indictment was filed, and the county in which the juvenile delinquency allegation was filed, if applicable;
- (3) the law enforcement agency employing the arresting officer,



1 if known;

2 (4) the court in which the criminal charges or juvenile
3 delinquency allegation was filed, if applicable;

4 (5) any other known identifying information, such as:

5 (A) the name of the arresting officer;

6 (B) case number or court cause number;

7 (C) any aliases or other names used by the petitioner;

8 (D) the petitioner's driver's license number; and

9 (E) a list of each criminal charge and its disposition, if
10 applicable;

11 (6) the date of the petitioner's birth; and

12 (7) the petitioner's Social Security number.

13 A person who files a petition under this section is not required to pay
14 a filing fee.

15 (d) The court shall serve a copy of the petition on the prosecuting
16 attorney.

17 (e) Upon receipt of a petition for expungement, the court:

18 (1) may summarily deny the petition if the petition does not meet
19 the requirements of this section, or if the statements contained in
20 the petition indicate that the petitioner is not entitled to relief; and

21 (2) shall grant the petition unless:

22 (A) the conditions described in subsection (a) have not been
23 met; or

24 (B) criminal charges are pending against the person.

25 (f) Whenever the petition of a person under this section is granted:

26 (1) no information concerning the arrest, criminal charges,
27 juvenile delinquency allegation, vacated conviction, or vacated
28 juvenile delinquency adjudication may be placed or retained in
29 any state central repository for criminal history information or in
30 any other alphabetically arranged criminal history information
31 system maintained by a local, regional, or statewide law
32 enforcement agency;

33 (2) the clerk of the supreme court shall seal or redact any records
34 in the clerk's possession that relate to the arrest, criminal charges,
35 juvenile delinquency allegation, vacated conviction, or vacated
36 juvenile delinquency adjudication;

37 (3) the records of:

38 (A) the sentencing court;

39 (B) a juvenile court;

40 (C) a court of appeals; and

41 (D) the supreme court;

42 concerning the person shall be redacted or permanently sealed;



and

(4) with respect to the records of a person who is named as an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

(A) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

(B) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and the court of appeals are not required to redact, destroy, or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name; and

(5) with respect to the records of a person named as a party in a civil action related to the arrest, criminal charges, juvenile delinquency allegation, vacated conviction, or vacated juvenile delinquency adjudication, the court in which the matter was filed shall, after being notified by the petitioner and receiving a copy of the order of expungement:

(A) redact any reference to the civil action as it appears on any electronic case management system accessible to the general public so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

(B) provide a redacted copy of documents in the civil action to any publisher or organization to whom the documents are provided, after the date on which the court received notice and a certified copy of the expungement order (whichever occurred last) from the petitioner.

The court is not required to redact, destroy, or otherwise dispose of any existing copy of a document that includes the petitioner's name.

(g) If the court issues an order granting a petition for expungement under this section, the order must include the information described in subsection (c).

(h) This chapter does not require any change or alteration in:

- (1) any internal record made by a law enforcement agency at the time of the arrest and not intended for release to the public; or
- (2) records that relate to a diversion or deferral program.



(i) If a person whose records are expunged brings an action that might be defended with the contents of the expunged records, the defendant is presumed to have a complete defense to the action. In order for the plaintiff to recover, the plaintiff must show that the contents of the expunged records would not exonerate the defendant. The plaintiff may be required to state under oath whether the plaintiff had records in the criminal justice system and whether those records were expunged. If the plaintiff denies the existence of the records, the defendant may prove their existence in any manner compatible with the law of evidence.

SECTION 3. IC 35-38-9-6, AS AMENDED BY P.L.142-2015, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) If the court orders conviction records expunged under sections 2 through 3 of this chapter, the court shall do the following with respect to the specific records expunged by the court:

(1) Order:

- (A) the department of correction;
- (B) the bureau of motor vehicles; and
- (C) each:

- (i) law enforcement agency; and
- (ii) other person;

who incarcerated, provided treatment for, or provided other services for the person under an order of the court; to prohibit the release of the person's records or information in the person's records to anyone without a court order, other than a law enforcement officer acting in the course of the officer's official duty.

(2) Order the central repository for criminal history information maintained by the state police department to seal the person's expunged conviction records. Records sealed under this subdivision may be disclosed only to:

- (A) a prosecuting attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the official duties of the prosecuting attorney;
- (B) a defense attorney, if:
 - (i) authorized by a court order; and
 - (ii) needed to carry out the professional duties of the defense attorney;
- (C) a probation department, if:
 - (i) authorized by a court order; and



(ii) necessary to prepare a presentence report;
 (D) the Federal Bureau of Investigation and the Department of Homeland Security, if disclosure is required to comply with an agreement relating to the sharing of criminal history information;

(E) the:

- (i) supreme court;
 - (ii) members of the state board of law examiners;
 - (iii) executive director of the state board of law examiners;
- and
- (iv) employees of the state board of law examiners, in accordance with rules adopted by the state board of law examiners;

for the purpose of determining whether an applicant possesses the necessary good moral character for admission to the bar;

(F) a person required to access expunged records to comply with the Secure and Fair Enforcement for Mortgage Licensing Act (12 U.S.C. 5101 et seq.) or regulations adopted under the Secure and Fair Enforcement for Mortgage Licensing Act; and

(G) the bureau of motor vehicles, the Federal Motor Carrier Administration, and the Commercial Drivers License Information System (CDLIS), if disclosure is required to comply with IC 9-24-6-2(d) relating to reporting a conviction for a violation of a traffic control law.

(3) Notify the clerk of the supreme court to seal any records in the clerk's possession that relate to the conviction.

A probation department may provide an unredacted version of a presentence report disclosed under subdivision (2)(C) to any person authorized by law to receive a presentence report.

(b) Except as provided in subsection (c), if a petition to expunge conviction records is granted under sections 2 through 3 of this chapter, the records of:

- (1) the sentencing court;
- (2) a juvenile court;
- (3) a court of appeals; and
- (4) the supreme court;

concerning the person shall be permanently sealed. However, a petition for expungement granted under sections 2 through 3 of this chapter does not affect an existing or pending driver's license suspension.

(c) If a petition to expunge conviction records is granted under sections 2 through 3 of this chapter with respect to the records of a person who is named as:



(1) an appellant or an appellee in an opinion or memorandum decision by the supreme court or the court of appeals, the court shall:

(1) (A) redact the opinion or memorandum decision as it appears on the computer gateway administered by the office of technology so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

(2) (B) provide a redacted copy of the opinion to any publisher or organization to whom the opinion or memorandum decision is provided after the date of the order of expungement.

The supreme court and court of appeals are not required to destroy or otherwise dispose of any existing copy of an opinion or memorandum decision that includes the petitioner's name; and

(2) a party in a civil action related to the expunged conviction, upon receipt of notice and a certified copy of the order of expungement, the court in which the related civil action was filed shall:

(A) redact any reference to the civil action as it appears on any electronic case management system accessible to the general public so that it does not include the petitioner's name (in the same manner that opinions involving juveniles are redacted); and

(B) provide a redacted copy of documents in the civil action to any publisher or organization to whom the documents are provided.

The court is not required to redact, destroy, or otherwise dispose of any existing copy of a document that includes the petitioner's name.

(d) Notwithstanding subsection (b), a prosecuting attorney may submit a written application to a court that granted an expungement petition under this chapter to gain access to any records that were permanently sealed under subsection (b), if the records are relevant in a new prosecution of the person. If a prosecuting attorney who submits a written application under this subsection shows that the records are relevant for a new prosecution of the person, the court that granted the expungement petition shall:

(1) order the records to be unsealed; and

(2) allow the prosecuting attorney who submitted the written application to have access to the records.

If a court orders records to be unsealed under this subsection, the court shall order the records to be permanently resealed at the earliest



possible time after the reasons for unsealing the records cease to exist. However, if the records are admitted as evidence against the person in a new prosecution that results in the person's conviction, or are used to enhance a sentence imposed on the person in a new prosecution, the court is not required to reseal the records.

(e) If a person whose conviction records are expunged under sections 2 through 5 of this chapter is required to register as a sex offender based on the commission of a felony which has been expunged:

(1) the expungement does not affect the operation of the sex offender registry web site, any person's ability to access the person's records, records required to be maintained concerning sex or violent offenders, or any registration requirement imposed on the person; and

(2) the expunged conviction must be clearly marked as expunged on the sex offender registry web site.

(f) Expungement of a crime of domestic violence under section 2 of this chapter does not restore a person's right to possess a firearm. The right of a person convicted of a crime of domestic violence to possess a firearm may be restored only in accordance with IC 35-47-4-7.

(g) If the court issues an order granting a petition for expungement under sections 2 through 3 of this chapter, the court shall include in its order the information described in section 8(b) of this chapter.

SECTION 4. IC 35-38-9-10, AS AMENDED BY P.L.142-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 10. (a) This section does not apply to a person to whom sealed records may be disclosed under section 6(a)(2) of this chapter.

(b) It is unlawful discrimination for any person to:

(1) suspend;

(2) expel;

(3) refuse to employ;

(4) refuse to admit;

(5) refuse to grant or renew a license, permit, or certificate necessary to engage in any activity, occupation, or profession; or

(6) otherwise discriminate against;

any person because of a conviction or arrest record expunged or sealed under this chapter.

(c) Except as provided in section 6(f) of this chapter, the civil rights of a person whose conviction has been expunged shall be fully restored, including the right to vote, to hold public office, to be a proper person under IC 35-47-1-7(2), and to serve as a juror.



(d) In any application for employment, a license, or other right or privilege, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?"

(e) A person whose record is expunged shall be treated as if the person had never been convicted of the offense. However, upon a subsequent arrest or conviction for an unrelated offense, the prior expunged conviction:

(1) may be considered by the court in determining the sentence imposed for the new offense;

(2) is a prior unrelated conviction for purposes of:

(A) a habitual offender enhancement; and

(B) enhancing the new offense based on a prior conviction; and

(3) may be admitted as evidence in the proceeding for a new offense as if the conviction had not been expunged.

(f) Any person that discriminates against a person as described in subsection (b) commits a Class C infraction and may be held in contempt by the court issuing the order of expungement or by any other court of general jurisdiction. Any person may file a written motion of contempt to bring an alleged violation of this section to the attention of a court. In addition, the person is entitled to injunctive relief.

(g) In any judicial or administrative proceeding alleging negligence or other fault, an order of expungement may be introduced as evidence of the person's exercise of due care in hiring, retaining, licensing, certifying, admitting to a school or program, or otherwise transacting business or engaging in activity with the person to whom the order of expungement was issued.

(h) A conviction that has been expunged under this chapter is not admissible as evidence in an action for negligent hiring, admission, or licensure against a person or entity who relied on the order.

(i) An expungement case, and all documents filed in the case, becomes confidential when the court issues the order granting the petition. However, until the court issues the order granting the petition, documents filed in the case are not confidential, and any hearing held in the case shall be open. **If:**

(1) a petition for expungement was filed before July 1, 2015;

(2) the court issued an order granting the petition; and

(3) one (1) or more documents filed in the case are not confidential;

the court shall, upon the motion of any person or upon the court's



1 **own motion, issue an order sealing all documents filed in the case.**
 2 **A document ordered sealed under this subsection is confidential.**

